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§ 701.4 Procedures.

(a) *Reporting period.* The Department of Commerce publishes a notice in the FEDERAL REGISTER annually reminding the public that U.S. firms are required to report annually on contracts for the sale of defense-related items or defense-related services to foreign governments or foreign firms that are subject to offset agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually on offset transactions completed in performance of existing offset commitments for which offset credit of \$250,000 or more has been claimed from the foreign representative. Such reports must be submitted to the Department of Commerce no later than June 15 of each year and must contain offset agreement and transaction data for the previous calendar year.

(b) *Reporting instructions.* (1) U.S. firms must only report on offset agreements they have entered into with a foreign customer. U.S. firms must report offset transactions that they are directly responsible for reporting to the foreign customer, regardless of who performs the transaction (*i.e.*, prime contractors must report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(2) Reports must be submitted in hardcopy to the Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Room 3876, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and as an e-mail attachment to OffsetReport@bis.doc.gov. E-mail attachments must include the information in a computerized spreadsheet or database format. If unable to submit a report in computerized format, companies should contact the Offset Program Manager for guidance. All submissions must include a point of contact (name and telephone number) and must be submitted by a company official authorized to provide such information.

(c) Reports must include the information described below. Any necessary comments or explanations relating to the information shall be footnoted and supplied on separate sheets attached to the reports.

(1) *Reporting on offset agreements.* U.S. firms shall provide an itemized list of new offset agreements entered into during the reporting period, including the information about each such agreement described in paragraphs (c)(1)(i) through (c)(1)(ix) of this section.

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset agreement.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense service referenced in the military export sale, as well as the date (month and year) that the related offset agreement was signed.

(iii) *Military export sale classification.* Identify the six-digit North American Industry Classification System (“NAICS”) code(s) associated with the military export sale. Refer to U.S. Census Bureau’s U.S. NAICS Manual for a listing of applicable NAICS codes (<http://www.census.gov/epcd/www/naics.html>). Paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(E) of this section provide examples that illustrate how to select the appropriate NAICS code(s).

(A) *Example 1.* Company A enters into an offset agreement associated with the sale of 24 fighter aircraft and guided missiles to country B. Fighter aircraft manufacturing is classified in the NAICS as NAICS 336411, Aircraft Manufacturing. Guided missiles are classified in the NAICS as NAICS 336414, Guided Missile and Space Vehicle Manufacturing. This military export sale should be classified under NAICS 336411 and NAICS 336414.

(B) *Example 2.* Company B enters into an offset agreement associated with the sale of a navigation system for a fleet of military aircraft to country C. Navigation system manufacturing is classified in the NAICS as NAICS 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing. This military export sale should be classified under NAICS 334511.

(C) *Example 3.* Company C enters into an offset agreement associated with the sale of radio communication equipment to country D. Radio communication equipment is classified in the

NAICS as NAICS 334220, Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing. This military export sale should be classified under NAICS 334220.

(D) *Example 4.* Company D enters into an offset agreement associated with the sale of 30 aircraft engines to country E. Aircraft engines are classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This military export sale should be classified under NAICS 336412.

(E) *Example 5.* Company E enters into an offset agreement associated with the sale of armored vehicles to country F. Armored vehicles are classified in the NAICS as NAICS 336992, Military Armored Vehicle, Tank, and Tank Component Manufacturing. This military export sale should be classified under NAICS 336992.

(iv) *Foreign party to offset agreement.* Identify the foreign government agency or branch that is the signatory to the offset agreement.

(v) *Military export sale value.* Provide the U.S. dollar value of the military export sale. Should the military export sale involve more than one NAICS code, please separately list the values associated with each NAICS code.

(vi) *Offset agreement value.* Provide the U.S. dollar value of the offset agreement.

(vii) *Offset agreement term.* Identify the term of the offset agreement in months.

(viii) *Offset agreement performance measures.* Identify each category that describes the offset agreement's performance measures: best efforts, accomplishment of obligation, or other (please describe).

(ix) *Offset agreement penalties for non-performance.* Identify each category that describes the offset agreement's penalties for non-performance. For example, the agreement may include penalties such as liquidated damages, debarment from future contracts, added offset requirements, fees, commissions, bank credit guarantees, or other (please describe).

(2) *Reporting on offset transactions.* U.S. firms shall provide an itemized list of offset transactions completed

during the reporting period, including the elements listed in paragraphs (c)(2)(i) through (c)(2)(x) of this section for each such transaction (numerical estimates are acceptable when actual figures are unavailable; estimated figures shall be followed by the letter "E").

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset transaction.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense service referenced in the military export sale associated with the offset transaction, as well as the date the offset agreement was signed (month and year).

(iii) *Offset transaction category.* Identify each category that describes the offset transaction as co-production, technology transfer, subcontracting, training, licensing of production, investment, purchasing, credit assistance or other (please describe).

(iv) *Offset transaction classification.* Identify the six-digit NAICS code(s) associated with the offset transaction. Refer to U.S. Census Bureau's U.S. NAICS Manual for a listing of applicable NAICS codes (<http://www.census.gov/epcd/www/naics.html>). Paragraphs (c)(2)(iv)(A) through (c)(2)(iv)(E) of this section provide examples that illustrate how to select the appropriate NAICS code in the instances described therein.

(A) *Example 1.* Company A completes an offset transaction by co-producing aircraft engines in country B. Aircraft engine manufacturing is classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This offset transaction should be classified under NAICS 336412.

(B) *Example 2.* Company B completes an offset transaction by licensing the production of automotive electrical switches in country C. Company B also assists in structuring a wholesale distribution network for these products. Automotive electrical switch manufacturing is classified in the NAICS as NAICS 335931, Current Carrying Wiring Device Manufacturing, and the wholesale distribution network is classified in the NAICS as NAICS 423120, Motor

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Vehicle Supplies and New Parts Merchant Wholesalers. This offset transaction should be classified under NAICS 335931 and NAICS 423120.

(C) *Example 3.* Company C completes an offset transaction by transferring technology to establish a biotechnology research center in country D. Biotechnology research and development is classified in the NAICS as NAICS 541711, Research and Development in Biotechnology. This offset transaction should be classified under NAICS 541711.

(D) *Example 4.* Company D completes an offset transaction by purchasing steel forgings from a steel mill in country E. Steel forgings are classified in the NAICS as NAICS 331111, Iron and Steel Mills. This offset transaction should be classified under NAICS 331111.

(E) *Example 5.* Company E completes an offset transaction by providing training assistance services in country F to certain plant managers. Training assistance is classified in the NAICS as NAICS 611430, Professional and Management Development Training. This offset transaction should be classified under NAICS 611430.

(v) *Offset transaction type.* Identify the offset transaction as a direct offset transaction, an indirect offset transaction, or a combination of both.

(vi) *Name of offset performing entity.* Identify, by name, the entity performing the offset transaction on behalf of the U.S. entity that entered into the offset agreement.

(vii) *Name of offset receiving entity.* Identify the foreign entity receiving benefits from the offset transaction.

(viii) *Actual offset value.* Provide the U.S. dollar value of the offset transaction without taking into account multipliers or intangible factors. Should the offset transaction involve more than one NAICS code, please list the U.S. dollar values associated with each NAICS code.

(ix) *Offset credit value.* Provide the U.S. dollar value credits claimed by the offset performing entity, including any multipliers or intangible factors.

(x) *Offset transaction performance location.* Name the country where each offset transaction was fulfilled, such as

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the purchasing country, the United States, or a third country.

[74 FR 68141, Dec. 23, 2009]

§ 701.5 Confidentiality.

(a) As provided by § 309(c) of the Defense Production Act of 1950, as amended, BIS shall not publicly disclose the information it receives pursuant to this part, unless the firm furnishing the information subsequently specifically authorizes public disclosure.

(b) Public disclosure must be authorized in writing by an official of the firm competent to make such an authorization.

(c) Nothing in this provision shall prevent the use of data aggregated from information provided pursuant to this part in the summary report to the Congress described in § 701.1.

§ 701.6 Violations, penalties, and remedies.

(a) Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a \$10,000 fine, or one year in prison, or both.

(b) The Government may seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and this regulation.

[74 FR 68141, Dec. 23, 2009]

PARTS 702–704 [RESERVED]

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